

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-151953-07

Date: May 13, 2008

Legend

Decedent =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Spouse =

Family Trust =

Daughter =

Granddaughter =

Grandson =

Attorney =

Dear :

This is in response to your submission dated November 21, 2007, in which you request an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to sever a trust into an exempt and nonexempt trust under § 26.2654-1(b)(1) of the Generation-Skipping Transfer (GST) Tax Regulations and to make a "reverse" qualified terminable interest property (QTIP) election under § 2652(a)(3) of the Internal Revenue Code with respect to the exempt trust.

Decedent died testate on Date 1 survived by Spouse. Spouse was appointed executor of Decedent's estate. Decedent's will, executed on Date 2, provided that Decedent's residuary estate be distributed to the Family Trust, an inter vivos revocable trust established by Decedent and Spouse.

Under the terms of the Family Trust, on Decedent's death the corpus is to be divided into three separate trusts: the Survivor's Trust funded with Spouse's separate and community property; the Marital Trust funded with the minimum amount necessary to reduce the estate tax to zero; and the Credit Trust funded with the balance of the corpus.

Under the terms of the Marital Trust, Spouse is entitled to all trust income, payable no less frequently than annually, and the trustee has the discretion to distribute corpus to provide for Spouse's health, support and maintenance. On Spouse's death, the Marital Trust corpus is to be distributed to the trustees of the Credit Trust, to be disposed of under the terms of that trust.

The terms of the Credit Trust provide that all trust income is to be paid to Spouse for her life, and the trustee has the discretion to distribute corpus in such amounts necessary to provide for Spouse's health, maintenance and support. On Spouse's death, the Credit Trust provides for certain pecuniary bequests. The balance of the Credit Trust corpus is to be distributed to Daughter, if living, and if not, equally to Granddaughter and Grandson, or their descendants in the event of their prior death.

Decedent's Form 706, United States Estate (and Generation-skipping) Tax Return, was timely filed on Date 3 and subsequently, supplemental information was filed on Date 4. On the Form 706, Spouse, as executor, elected to treat the property passing to the Marital Trust as qualified terminable interest property (QTIP) under § 2056(b)(7). Spouse's attorney did not advise Spouse to sever the Marital Trust into an exempt trust and a nonexempt trust, to make the reverse QTIP election, or to allocate Decedent's GST exemption. Accordingly, the Marital Trust was not severed, and on Schedule R of Form 706, no reverse QTIP election was made.

It is represented that Spouse, Daughter, Granddaughter and Grandson are currently living and that there have been no generation-skipping transfers from the Marital Trust.

You have requested an extension of time under § 301.9100 to divide the Marital Trust into a GST Exempt QTIP Trust A, to be funded with an amount equal to Decedent's unused GST exemption (after taking into account the amount of exemption automatically allocated under § 2632(e)(1) to the Credit Trust) and a GST Non-exempt QTIP Trust B (to be funded with the balance of the Marital Trust.) You have also requested an extension of time under § 301.9100 to make the reverse QTIP election under § 2652(a)(3) with respect to the GST Exempt QTIP Trust A.

Section 2601 imposes a tax on every generation-skipping transfer made by a transferor to a skip person.

Section 2602 provides that the amount of the tax is the taxable amount multiplied by the applicable rate. Section 2641(a) defines "applicable rate" as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Under §§ 2631(a) and (c), for purposes of determining the inclusion ratio, every individual is allowed a GST exemption equal to the applicable exclusion amount under § 2010(c), which may be allocated by the individual (or his executor) to any property with respect to which the individual is the transferor.

Section 2631(b) provides that any allocation, once made, shall be irrevocable. Section 2632(a)(1) provides that any allocation by an individual of the individual's GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 26.2632-1(d)(1) provides, in part, that an allocation of a decedent's unused GST exemption by the executor of the decedent's estate is made on the appropriate United States Estate (and Generation-Skipping Transfer) Tax Return (Form 706 or Form 706NA) filed on or before the date prescribed for filing the return by § 6075(a) (including any extensions actually granted). An allocation of GST exemption to a trust (whether or not funded at the time the Form 706 or Form 706NA is filed) is effective if the notice of allocation clearly identifies the trust and the amount of the decedent's GST exemption allocated to the trust.

Section 2632(e)(1) provides that any portion of such individual's GST exemption which has not been allocated within the time prescribed by section 2632(a) shall be deemed to be allocated as follows: first, to property that is the subject of a direct skip occurring at such individual's death, and second, to trusts with respect to which such individual is the transferor and from which a taxable distribution or taxable termination might occur at or after such individual's death.

Under § 2652(a)(1) and § 26.2652-1(a)(1), the "transferor" for GST tax purposes is, generally, the individual with respect to whom the property was last subject to the federal estate or gift tax. An individual is treated as transferring any property with respect to which such individual is the transferor.

Section 2652(a)(3) provides, in part, that in the case of any trust with respect to which a deduction is allowed to the decedent's estate under § 2056(b)(7), the estate may elect to treat all of the property in such trust for purposes of chapter 13 as if the election to be treated as qualified terminable interest property had not been made (a reverse QTIP election). Section 26.2652-2(b) provides that an election under § 2652(a)(3) is made on the return on which the QTIP election is made.

Section 26.2654-1(b)(1) provides, in part, that the severance of a trust that is included in the transferor's gross estate into two or more trusts is recognized for purposes of chapter 13 if the trust is severed pursuant to discretionary authority granted under the governing instrument or under local law. The terms of the new trusts must provide, in the aggregate, for the same succession of interests and beneficiaries as provided under the original trust. The severance must occur (or a reformation proceeding be commenced) prior to the date prescribed for filing the federal estate tax return for the estate of the transferor. The trusts must be severed either on a fractional basis or a pecuniary basis (if so required by the governing instrument). If severed on a fractional basis, the separate trusts need not be funded with a pro rata portion of each asset held by the undivided trust.

Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

Section 301.9100-3(a) provides, in part, that requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 must be made under the rules of § 301.9100-3. Requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1) provides, in part, except as provided in § 301.9100-3(b)(3)(i) through (iii), that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(c)(1) provides, in part, that the Commissioner will grant a reasonable extension of time to make a regulatory election only when the interests of the Government will not be prejudiced by the granting of relief.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Accordingly, an extension of time of 60 days from the date of this letter is granted to sever the Marital Trust into GST Exempt Marital Trust A and GST Non-Exempt Marital Trust B and to make the reverse QTIP election with respect to GST Exempt Marital Trust A. As a result of the severance of the Marital Trust and the "reverse" QTIP election with respect to Marital Trust A, Decedent's remaining GST exemption will be allocated between the GST Exempt QTIP Trust A and the Credit Trust in accordance with the rules provided in section 2632(e)(1). The election should be made and the severance reported on a supplemental Form 706. The supplemental Form 706 should be filed with the Internal Revenue Service Center,

Cincinnati, Ohio 45999. A copy of this letter should be attached to the form. A copy is enclosed for this purpose.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

William P. O'Shea
Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures:

Copy for § 6110 purposes
Copy of this letter